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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/413,644

10/06/1999

NEIL RICHARDS

S1022/8338

2260

7590

11/26/2004

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EXAMINER

PHILPOTT, JUSTIN M

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/413,644

Applicant(s)

RICHARDS ET AL.

Examiner

Justin M Philpott

Art Unit

2665

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☐ Other: _____


ALPUS H. HSU
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant's arguments are not persuasive.

Specifically, applicant argues (pages 6-10) that modifying Byrn with a single fixed wheel rate is improper and further results in a system which fails to comprise all of the limitations applicant's claims. That is, applicant has responded with arguments pertaining to a second of two ways previously discussed by Examiner by which Byrn may provide a "substantially constant" time interval. However, applicant has not addressed the first, more obvious, way by which Byrn provides a "substantially constant" time interval.

In the Remarks section of the Final Office action, mailed June 1, 2004, Examiner has discussed two ways by which Byrn may provide a "substantially constant" time interval as recited in applicant's claims. As previously discussed, while Byrn provides for the potential for different wheel rates (e.g., Byrn uses an example of three wheel rates, see col. 4, lines 42-45) and priorities (corresponding to QOS parameters for a VC), each wheel rate is a fixed amount (e.g., one slot per cell time, one slot per 10 cell times, etc.). That is, the designated rates are constant. Accordingly, this is one example whereby Byrn provides a "substantially constant" time interval (see page 2 of Final Office action, mailed June 1, 2004).

This first example of Byrn providing a "substantially constant" time interval has not been contested by applicant. Accordingly, applicant's argument that modifying Byrn with a single fixed wheel rate (as considered by Examiner in a second example) cannot provide all of the limitations of applicant's claims is moot, since Byrn already teaches a "substantially constant" time interval as discussed above in the first example.